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In the Supreme Court of the United States

OCTOBER TERM, 1950.

No. 185.

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, et al.,

Petitioners,

vs.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, et al.,

Respondents.

PETITIONERS' BRIEF ON THE MERITS.

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In the Supreme Court of the United States

OCTOBER TERM, 1959.

No. 165.

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, *et al.*,
Petitioners,

vs.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, *et al.*,
Respondents.

PETITIONERS' BRIEF ON THE MERITS.

OPINIONS BELOW.

The opinion of the United States Court of Appeals for the Fifth Circuit (R. 369) is reported in 266 F. 2d 335. The United States District Court did not render an opinion.

JURISDICTION.

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on April 20, 1959.

The jurisdiction of this Court is invoked under the provisions of 28 U. S. C., Section 1254(1).

STATUTES INVOLVED.

The statute involved is the Railway Labor Act, as amended (44 Stat. 577 (1926), 48 Stat. 1185 (1934), 45 U. S. C. Sections 151-163), pertinent sections of which are set out in the Appendix.

QUESTION PRESENTED.

Upon granting the writ of certiorari, the Court expressly limited the question to be considered as follows:

> "Whether a district court under circumstances where a dispute arising under the Railway Labor Act has been submitted by a railroad to the National Railroad Adjustment Board and an injunction against a strike by employees is sought on authority of *Brotherhood of Railroad Trainmen v. Chicago River and Ind. R. R. Co.*, 353 U. S. 30, may on the granting of an injunction impose reasonable conditions designed to protect the employees against a harmful change in working conditions during pendency of the dispute before the Adjustment Board by ordering that the railroad restore the status quo, or, in the alternative, pay the employees the amount they would have been paid had changes in working conditions giving rise to the dispute not been made?"

STATEMENT OF THE CASE.

This litigation began when, on November 6, 1958, respondents obtained a temporary restraining order from the United States District Court for the Northern District of Texas, against a strike by the engineers, firemen, conductors, brakemen and switchmen of respondents (R. 32). The strike had been precipitated by certain changes in the intradivisional runs of freight trains and the away-from-home terminals for freight service between Wichita Falls, Texas, and Forgan, Oklahoma, made by respondents. The complaint alleged that the respondents had the right to make such changes as a managerial prerogative and that these rights are not affected by the collective bargaining agreements with their employees (R. 2, 20, 21).

Petitioners filed a motion to dismiss the order and complaint on the grounds that the respondents had at-

tempted to change certain collective bargaining agreements affecting rates of pay, rules, or working conditions within the meaning of Section 6 of the Railway Labor Act, without giving the required notice of intention to change as required by the act (R. 32). Petitioners filed an answer to the complaint which denied that respondents had the right to make such changes as a managerial prerogative (R. 37, 38). The answer also set up the affirmative defense that the respondents arbitrarily abolished home terminals and tabulated runs, thus changing working conditions in violation of the collective bargaining agreements and the Railway Labor Act (R. 38, 39).

Respondents on December 18, 1958, filed an amended and supplemental complaint predicating the claim to an injunction upon their submission of the dispute to the National Railroad Adjustment Board, to National Committees and Disputes Committees established by the collective bargaining agreements and to the National Mediation Board (R. 47, 53).

This labor dispute arose when the respondents ordered unilateral changes in working conditions embodied in collective bargaining agreements by their General Orders Nos. 119 and 120, issued October 2, 1958, effective at 12:01 A. M. on October 19, 1958. (R. 80, 81.)

Prior to October 19, 1958, established intradivisional runs in way freight service had been in existence for more than twenty-five years on respondents' line of railroad between Wichita Falls, Texas, and Forgan, Oklahoma. These runs were established as follows: Wichita Falls, Texas, to Altus, Oklahoma, a distance of 75.9 miles, Wichita Falls, the home terminal and Altus, the away-from-home terminal; Altus, Oklahoma, to Elk City, Oklahoma, a distance of 58.3 miles, Altus, the home terminal; Elk City, Oklahoma, to Woodward, Oklahoma, a distance of 84.8

miles, Elk City, the home terminal; Woodward, Oklahoma, to Forgan, Oklahoma, a distance of 83.2 miles, Woodward, the home terminal (R. 47, 49). Five crews were assigned to these runs in way freight service (R. 47, 48).

The respondents unilaterally abolished these intradivisional runs and established new intradivisional runs by General Orders Nos. 119 and 120 (R. 48, 49, 80, 81). The new intradivisional runs were established as follows: Wichita Falls, Texas, to Elk City, Oklahoma, a distance of 134.2 miles, Wichita Falls, the home terminal; Elk City, Oklahoma, to Forgan, Oklahoma, a distance of 168 miles, Elk City, the home terminal. Only three crews were assigned to these new runs in wayfreight service (R. 48). Respondents also abolished Altus and Woodward, Oklahome, as away-from-home terminals for crews in this service and established Elk City as an away-from-home terminal for such crews (R. 49).

The respondents are bound by contracts with the Brotherhood of Locomotive Engineers and the Brotherhood of Locomctive Firemen and Enginemen as follows (R. 39, 149, 151):

> Article 4—Interdivisional, Interseniority District, Intradivisional, and/or Intraseniority District Service (Freight or Passenger)
>
> "Where a carrier desires to establish interdivisional, interseniority district, intradivisional, or intraseniority district runs in passenger or freight service, the carrier shall give notice to the General Chairman of the organizations involved of its desire to establish such runs, giving detailed information specifying the service it proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such service, the purpose being to furnish the employees with all the necessary information.

"The parties will negotiate in good faith on such proposals and failing to agree, either party may invoke the services of the National Mediation Board. If mediation fails and the parties do not agree to arbitrate the dispute under the Railway Labor Act, then at the request of either party, the proposal will be considered by a National Committee consisting of the chiefs of the employee organizations involved and an equal number of carrier representatives who shall be members of the Carriers' Conference Committees, signatories hereto, or their successors or representatives, provided, however, that this procedure of appeal to the National Committee thus created shall not be made in any case for a period of six months from the date of this agreement.

"If said National Committee does not agree upon the disposition of the proposal, then the conferees will in good faith undertake to agree upon a neutral chairman who will sit with the Committee, hear the arguments of the parties, and make representations and recommendations to the parties with the view in mind of disposing of the controversy. In the event the parties do not agree upon such neutral chairman, then upon the request of the parties, or either of them, the National Mediation Board will appoint the chairman.

"While the recommendations of the Chairman are not to be compulsory or binding as an arbitration award, yet the parties hereto affirm their good intentions of arranging through the above procedure for the final disposition of all such disputes on a fair and reasonable basis.

"Every effort will be made to settle disputes over interdivisional service on the property and thus to minimize the number of appeals to the above National Committee.

"This rule shall become effective August 1, 1952, except on such carrier as may elect to preserve exist-

ing rules or practices and so notify the authorized employee representatives on or before July 1, 1952."

The respondents are bound by an agreement with Order of Railway Conductors and Brakemen, and Brotherhood of Railroad Trainmen, which provides as follows (R. 126, 129):

Article 10—"Wayfreight and Mixed Train Service
"Rates of Pay Effective December 16, 1953.

"(a) Conductors and brakemen in wayfreight and mixed train service will be paid:

Class	Per Mile Cents	Per Day
Conductors	15.31	$15.31
Brakemen	13.82	13.82

* * * * *

Runs	Number of Crews	Brakemen per Crew
Wichita Falls Altus	2	3

* * * * *

"(f) No changes will be made in the above runs, nor number of crews assigned to them, unless business or changed conditions justify it, nor will terminals be changed, or runs rearranged, without ten (10) days' notice.

* * * * *

"ARTICLE 59

"All rulings in reference to any article of this Agreement shall be made in writing only by the Officials signing this Agreement and the General Chairman of the O. R. C. and the B. of R. T. organizations will be furnished with a copy of such rulings, but such rulings shall not be made effective until agreed to by the parties herein mentioned."

The respondents were bound by mediation agreements with the petitioners which provide that the purpose of the agreement is to fix the general level of compensation during the period of agreement ending in November, 1959, and, with certain exceptions, not applicable to the situation here, that neither the respondents nor any of the petitioners' organizations would serve any notice or progress and pending notice to negotiate agreements which would have the effect of increasing or decreasing the number of employees required to be used under existing agreements (R. 160, 161, 164, 167).

Petitioners requested on October 7, 1958, that respondents cancel General Orders Nos. 119 and 120. The respondents denied such request on the same day (R. 50). Petitioners invoked the services of the National Mediation Board on October 14, 1958, and the Board so advised the respondents (R. 50). Under the Railway Labor Act the respondents were required to maintain the status quo until the controversy had been acted upon by the Mediation Board.

Nevertheless, the respondents placed their General Orders 119 and 120 into effect at 12:01 A. M. on October 19, 1958 (R. 50), and thus unilaterally altered the working conditions of the service. The National Mediation Board advised the respondents on October 20, 1958, that the petitioners' application for the services of that Board had been given the Board's file Number C-2827; that its mediator was in Dallas and suggested that the respondents defer contemplated changes pending immediate investigation (R. 50). The changes had been made by respondents on the previous day, to-wit, October 19, 1958, and respondents refused to restore the prior conditions (R. 50).

The National Mediation Board closed its file C-2827 on November 5, 1958, and so notified all parties (R. 51).

On November 6, 1958, at 6:00 A. M. the employees of respondents went on strike. The strike was called off on receipt of the District Court's temporary restraining order against the strike issued on November 6, 1958.

Respondents submitted the dispute to the National Railroad Adjustment Board and to the Disputes Committees and the National Committees on December 10, 1958 (R. 53-57), and to the National Mediation Board on December 16, 1958 (R. 44).

At the hearing on the application for the preliminary injunction, on December 18, 1958, the District Court held that the matter should be held in abeyance pending efforts of the parties to settle the dispute or to agree upon arbitration looking toward final settlement of the dispute; that in the event the parties could not agree upon such arbitration then the matter should be held in abeyance until decisions on the various submissions of the controversy made by the respondents (R. 90, 91). The Court, therefore, enjoined the strike, pending settlement by arbitration or administrative decision on the dispute, on condition and only on condition that the respondents restore and maintain the conditions which existed prior to the issuance of General Orders 119 and 120 effecting changes which gave rise to the controversy and on account of which the strike was called, or, in the alternative, pay to the employees adversely affected by such General Orders the same amounts of money they would have paid had the changes made by such General Orders not been made (R. 90, 91, 101, 104, 355-7).

The respondents appealed from that part of the District Court's order of December 18, 1958, requiring respondents to restore and maintain conditions affected by their General Orders 119 and 120 or to pay the employees adversely affected by such orders (R. 92, 104). The peti-

tioners appealed from that part of the order granting a preliminary injunction against them. The Court of Appeals affirmed that part of the order granting a preliminary injunction against the strike and vacated that part of the order requiring respondents to restore and maintain conditions affected by their General Orders 119 and 120 (R. 377). The Court of Appeals held that the dispute was a minor dispute which the Adjustment Board alone had jurisdiction to resolve, and that the District Court could not pass any sort of preliminary judgment upon the merits of that dispute under the guise of discretionary equity powers to impose reasonable conditions upon the grant of an injunction (R. 369).

SUMMARY OF THE ARGUMENT.

In a case where, upon application of the railroads, an injunction against a strike of employees is issued upon authority of *Brotherhood of Railroad Trainmen v. Chicago River & Indiana Railroad Company*, 353 U. S. 30, on the ground that the matter in dispute is pending before the National Railroad Adjustment Board, the courts have power in equity to impose reasonable conditions on the injunction, such as that the railroads restore and maintain the working conditions which existed before issuance of general orders by the railroad provoking the strike or in lieu thereof pay the employees the amount of money they would have been paid had the orders not been issued. Neither the *Chicago River* case nor any other decision of this Court authorizing the issuance of injunctions to protect the jurisdiction of the Adjustment Board, deprives the courts of power to impose reasonable conditions on the granting of a strike injunction.

The imposition of reasonable conditions on an injunction issued pursuant to the *Chicago River* case, such as im-

posed by the District Court, to be in effect while the dispute is pending before the National Railroad Adjustment Board, does not impair or affect the jurisdiction of the Board to render an award deciding the questions of interpretation or application of collective bargaining agreements submitted to the Board by the railroads.

When issuing injunctions, including those issued upon application of railroads pursuant to the *Chicago River* case, a court of equity has the responsibility to protect all the interests which its injunction may affect; accordingly, the District Court in discharge of that responsibility, and in exercise of its equitable discretion, properly imposed conditions to protect the interests of the railroad employees, whose strike called in protest against the railroads' arbitrary change in working conditions had been enjoined, while awaiting decision of the Adjustment Board.

Since some of the employees, by issuance of the railroads' general orders abolishing terminals and changing runs without the railroads' having first pursued the procedures of notice, negotiation, mediation and others prescribed in existing agreements and Section 6 of the Railway Labor Act, would be furloughed from their jobs, and others would be required to travel longer distances to and from work, or move their residences, or sever or suffer impairment of family, social, and religious ties, none of which could be compensated for by money damages or through any order which the Adjustment Board is empowered to issue, this was a proper case for the imposing of conditions to protect employees pending decision of the Adjustment Board, in discharge of the courts' responsibility to protect the interests of the employees as well as those of the railroads under the law.

ARGUMENT.

I.

The District Court had power to impose conditions upon issuance of the injunction and the conditions imposed did not impair or affect the jurisdiction of the National Railroad Adjustment Board.

Upon the issuance of the preliminary injunction in this case, the Court attached alternative conditions: (1) That the respondents should restore the operating conditions as they had been prior to placing in effect General Orders Nos. 119 and 120, or (2) if the respondents did not restore the situation to the former conditions, then they should pay to the employees adversely affected by the change such amounts as they would have been paid had the changes not been made. Stated otherwise, what the Court ordered as a condition to issuance of the injunction was that the original runs requiring the employment of five crews (instead of the reduced number of three crews) and the two abolished intermediate terminals should be restored, or that those employees who were adversely affected by this change in terminals and reduction in crews should be paid what they would have earned had the change not been made.

The District Court was apparently of the opinion that the decision of this Court in the case *Brotherhood of Railroad Trainmen v. Chicago River & Indiana Railroad Co.*, 353 U. S. 30, authorized or required the issuance of a preliminary injunction to prohibit the maintenance of the strike because respondents, although belatedly and subsequent to the filing of the original complaint, had submitted the controversy to the National Railroad Adjustment Board as well as the National Mediation Board and National Committees and Disputes Committees provided

for in national agreements between the Brotherhoods and groups of railroad carriers. The *Chicago River* case upheld the issuance of an injunction to prevent a strike where the controversy had been submitted to the National Railroad Adjustment Board by the carrier and, as we understand that case, the basis of the holding was the protection of the exclusive primary jurisdiction of the Adjustment Board in controversies involving the interpretation or application of agreements between carriers and their employees. The exclusive primary jurisdiction of the Adjustment Board has been determined in a number of cases decided by this Court. *Order of Railway Conductors v. Pitney*, 326 U. S. 561; *Slocum v. Delaware, L. & W. R. Co.*, 339 U. S. 239. No question is involved in this case concerning the exclusive primary jurisdiction of the Adjustment Board in disputes involving the interpretation or application of such agreements. The statement of the question presented to this Court in this case, to which single question the Court in granting the writ of certiorari limited consideration, proceeds on the assumption as stated therein that the controversy is properly before the Adjustment Board. At least, the question presented for determination herein does not raise any point concerning the propriety of the submission of the controversy to the Adjustment Board. Our consideration thus is necessarily limited to the legal propriety of the action of the District Court in imposing reasonable conditions upon the issuance of the injunction.

The *Chicago River* decision dealt with the question of the propriety of an injunction to preserve and protect the exclusive primary jurisdiction of the National Railroad Adjustment Board. It cannot be regarded as authority one way or the other with respect to the imposing of conditions upon the issuance of an injunction. The Court

of Appeals, in holding that the imposing of conditions by the District Court in this case was unlawful, took the position that in so doing the District Court was in some way interfering with the jurisdiction of the Adjustment Board or that it was, by imposing the conditions, in some way passing upon the merits of the controversy before the Adjustment Board had the opportunity to exercise its jurisdiction.

The Railway Labor Act, within itself, contains no provisions relating to issuance of injunctions. It neither specifically authorizes nor prohibits the issuance of injunctions in any particular case. This Court, however, has authorized or upheld injunctions which have been issued in enforcing various provisions of the Act. In a long line of decisions beginning with *Texas and New Orleans Railroad Company, et al. v. Brotherhood of Railway and Steamship Clerks, et al.*, 281 U. S. 548, decided in May, 1930, the Court has many times placed its stamp of approval upon injunctions with respect to such matters as enforcing the rights of employees to bargain collectively, to require carrier and employee representatives to meet and treat, to prevent discriminatory practices, and to protect the exclusive primary jurisdiction of the National Railroad Adjustment Board in cases involving interpretation or application of collectively bargained agreements. Among the cases upholding one or the other of these matters, in addition to the *Brotherhood of Railway and Steamship Clerks* case, *supra*, are *Virginian R. Co. v. System Federation*, 300 U. S. 515; *Steele v. L. & N. R. Co.*, 323 U. S. 192; *Order of Railway Conductors v. Pitney*, 326 U. S. 561; *Slocum v. Delaware L. & W. R. Co.*, 339 U. S. 239; *Brotherhood of Railroad Trainmen v. Chicago River & Indiana Railroad Company*, 353 U. S. 30. In all of the cited cases as well as other cases decided by this Court

enforcing the Railway Labor Act, wherein the injunctive process was approved, the Court was not acting under specific statutory authorization but was exercising the normal general powers of a court of equity. In none of these cases did the Court indicate that there was or should be any restriction upon the power of the courts to exercise discretion with respect to imposing reasonable terms or conditions upon the issuance of an injunction. We believe the true rule as it then existed and still exists was stated by the Court in the case of *Inland Steel Co. v. United States,* 306 U. S. 153, 156, from which we quoted in our petition for the writ of certiorari and which quotation is here repeated for ready reference:

> "A court of equity 'in the exercise of its discretion, frequently resorts to the expedient of imposing terms and conditions upon the party at whose instance it proposes to act. The power to impose such conditions is founded upon, and arises from, the discretion which the court has in such cases, to grant, or not to grant, the injunction applied for. It is a power inherent in the court, as a court of equity, and has been exercised from time immemorial.' "

And in the case of *Federal Power Commission v. Interstate Natural Gas Co.,* 336 U. S. 577, 582, the Court cited the *Inland Steel* case as a precedent for a similar statement as follows:

> "When a federal court of equity grants relief by way of injunction, it has a responsibility to protect all the interests whom its injunction may affect."

Respondents have argued, both in the Court of Appeals and in their brief in opposition to the petition for the writ of certiorari, that the District Court in imposing the alternative conditions of restoring operations as they existed prior to the issuance of the General Orders or

paying to the employees what they would have earned had the changes not been made, was invading or interfering with the exclusive jurisdiction of the Adjustment Board to be the first body to pass upon the merits of the controversy. The Court of Appeals, in its opinion, apparently adopted that view for it stated (p. 341) that if the dispute were a minor dispute "then it is clear that the District Court could not pass any sort of preliminary judgment upon the merits of the dispute" and that the District Court would not have authority "under the guise of discretionary equity powers to impose reasonable conditions upon the grant of an injunction, of requiring the plaintiff railroad companies to come into equity with clean hands, or upon any other theory whatsoever."

That the jurisdiction of the Adjustment Board is such that it has power to interpret the agreements and to pass finally upon the merits of the dispute before it, is not questioned for the purposes of this cause, but we are unable to agree that imposing the conditions which the District Court placed upon the issuance of the injunction can be considered as a judgment of any sort upon the merits of the controversy before the Adjustment Board. It is a normal function of a court of equity in issuing an injunction to require the maintenance of the status quo, and in this case where the respondents had placed in effect, by their unilateral action over the objections of the petitioners, the changes which gave rise to the dispute, it was a normal, fair and reasonable exercise of the power of the court to condition its injunction upon restoration of the pre-existing situation. The District Court was fully aware of the limitations upon its power to pass judgment upon the merits of the controversy then pending before the Adjustment Board. This is shown by a number of statements of the court at the time the injunction was issued (R. 295,

317, 318). Thus at the top of p. 317 of the record appears this statement:

> "This court is without power to construe that contract."

and on p. 318:

> "As I said a moment ago, I cannot construe that contract; nobody can construe it but the Railway Adjustment Board. The Railway Adjustment Board is clothed with the sole power to construe that Act, and after they have construed it then you can have your hearings in the Court, if any jurisdiction is left to the Court."

The only injunction issued in this cause was against the petitioners and the employees, but because of the precipitate manner in which the respondents had placed the changes in effect without negotiating with the petitioners, or awaiting the action of the National Railroad Adjustment Board, the National Committees, the Disputes Committees or the National Mediation Board, to all which bodies the respondents had submitted one or another phase of the controversy after the filing of the complaint herein, it was a fair and reasonable exercise of the equity powers of the court to require as a condition of the issuance of the injunction (R. 102, 103, 317) that the factual situation giving rise to the controversy should remain in effect while the bodies to which the dispute had then been referred should have an opportunity to pass upon the dispute. Requiring the respondents to maintain such conditions while the dispute was under consideration by these various bodies or boards, does not in any way pass judgment upon the merits of the controversy or as to which party is or may be right and, as noted, the District Court expressly disclaimed any intention of passing upon the merits.

While we are concerned in this case only with the question of the propriety of imposing conditions upon the issuance of an injunction for the time that the dispute is pending before the National Railroad Adjustment Board (as distinguished from the Committees mentioned above and the National Mediation Board), there is nothing to be found in the conditions imposed which, in any manner, restricts the full exercise of the authority of the Adjustment Board to pass upon the facts of the controversy as submitted to it. This is not a case, as was the situation in the *Pitney* and *Slocum* cases, *supra*, where the trial courts had passed finally upon the merits of the controversy. Insofar as passing upon the merits of the controversy is concerned, as we see it, the District Court here did no more than what is done in ordering the maintenance of conditions upon the issuance of a restraining order, the issuance of which restraining order is never considered in any way to indicate conclusive or final views of the court upon the dispute.

There is a close analogy between the situation in the *Pitney* case and the situation here. This Court, in *Pitney*, approved an examination of the dispute by the District Court and its issuance of instructions to the Trustees respecting operation of the railroad pending interpretation of the agreements by the Adjustment Board. Here the District Court apparently made a preliminary examination of the facts and, in the interests of achieving justice and governing the conduct of the parties pending decision by the Adjustment Board, imposed conditions on its injunction.

With respect to its application to the instant case, respondents in their brief in opposition to the petition for the writ of certiorari, have misconstrued the holding or

the effect of the holding in the *Pitney* case. The decision of this Court in *Pitney* is as follows:

> "We hold that the District Court had supervisory power to instruct its trustees as it did. And a review of the evidence persuades us that the court's findings on which such instructions were based are not clearly erroneous. To the extent that its order constitutes instructions to its trustees, it is affirmed. Of course, in this respect it is no more binding on the Adjustment Board than the action of any other carrier. But the court should not have interpreted the contracts for purposes of finally adjudicating the dispute between the unions and the railroad. The dismissal of the cause should therefore be stayed by the District Court, so as to give an opportunity for application to the Adjustment Board for an interpretation of the agreements. Any rights clearly revealed by such an interpretation might then, if the situation warrants, be protected in this proceeding."

It will be recalled that the dispute in that case was between two labor organizations, the Brotherhood of Railroad Trainmen and Order of Railway Conductors, each of which contended that under its own agreement the employees represented by it were entitled to operate certain runs. The District Court as part of its holding had directed the trustees to recognize the agreement of the Brotherhood of Railroad Trainmen as controlling and to operate the railroad accordingly. But the District Court also went further and placed its interpretation upon the agreements for the purposes of finally adjudicating the dispute between the unions and the railroad. This Court disapproved that part of the order of the District Court which had construed the agreements and finally adjudicated the dispute. Such final adjudication, this Court held, was within the jurisdiction of the Adjustment Board. However, this Court did ap-

prove that part of the order of the District Court which instructed the trustees to recognize the Brotherhood of Railroad Trainmen's agreements but specifically ruled that such part of the order "is no more binding on the Adjustment Board than the action of any other carrier." The District Court in the *Pitney* case could not have given the instruction which it did to the trustees without, in some manner, giving consideration to what was involved in the dispute and in so doing obviously was to that extent the first to pass upon the merits of the controversy. But since that order of the District Court was not to be final or binding in any way upon the Adjustment Board, it was not an invasion of, or interference with, the jurisdiction of the Board.

The *Pitney* case, properly understood, not only does not support respondent's position but definitely favors the position of the petitioners. The District Court, in *Pitney*, in deciding in favor of the Brotherhood of Railroad Trainmen, as against the Order of Railway Conductors, approached passing upon the merits of the controversy to a far greater extent than it could be claimed that the District Court in the instant case was giving consideration to the merits, if indeed, the District Court can be said to have passed upon the merits at all. And as the District Court herein clearly understood and stated the limitations upon its jurisdiction to pass upon the controversy and construe the agreements, whatever may have been its decision bearing upon the merits of the dispute would be no more binding or conclusive on the Adjustment Board than were the instructions given to the trustees by the District Court in the *Pitney* case.

While the conditions imposed upon the issuance of the injunction in this case related to the restoration of the situation which prevailed before the changes in operation

had been made, there was no abuse of discretion by the District Court in so ordering. It is true that usually the issuance of a preliminary injunction is for the purpose of preserving *pendente lite* the then existing situation against a change by the defendant. Here the respondents seek, not only to preserve the conditions existing as of the date of application for the preliminary injunction against change by the defendants, but also to maintain free of prospect of change a situation which they themselves had created only a few days before. It was obvious to the District Court that the status which should be preserved was that which prevailed before such operating changes had been made. As was held in *Warner Brothers Pictures, Inc., et al. v. Gittone,* 110 F. 2d 292, the situation to be preserved was "the last actual non-contested status which preceded the pending controversy." Hence the condition that respondents should restore the original conditions while the dispute was under consideration by the Adjustment Board was reasonable and lawful.

In summary we submit that neither the Railway Labor Act nor any of the decisions of this Court respecting the use of injunctions to vindicate the exclusive primary jurisdiction of the National Railroad Adjustment Board precluded exercise of the equitable powers of the District Court to place such conditions upon the issuance of the preliminary injunction herein as its reasonable discretion directed, and that, in accordance with the rule stated in the *Inland Steel* case, the conditions were lawfully imposed. Otherwise, as said by the District Court (R. 103), the granting of a stay of the conditions "would constitute a frustration of the order of the Court" and "would be inequitable, and would constitute a miscarriage of justice."

There is pending in this Court on petition for a writ of certiorari the case of *United Railroad Workers Division,*

etc., et al. v. The Baltimore and Ohio Railroad Company, et al. which involves a point identical with that in the instant case. (No. 535, October Term, 1959). In that case the District Court granted an injunction and ordered restoration of the status quo ante, that is, that the discharged firemen and oilers be employed while the matter was pending before the National Railroad Adjustment Board. The Court of Appeals reversed with Judge Clark dissenting; but we are informed that the Court of Appeals has stayed its mandate pending disposition of the petition for a writ of certiorari.

II.

Protection of the employees during the years required for determination of the dispute by the National Railroad Adjustment Board from effects of the arbitrary unilateral action of respondents in changing working conditions justified the District Court's imposition of reasonable conditions on the injunction.

In the preceding part of this argument we have demonstrated that the District Court had power to impose reasonable conditions on the issuance of the injunction, notwithstanding pendency of the dispute before the Adjustment Board. The impact of respondents' general orders on the working conditions of the employees is such as to clearly show that this is a proper case for the exercise of that power.

At the outset of this discussion we emphasize that the labor dispute between the employees and respondents concerns much more than the interpretation or application of the terms of existing agreements. The dispute in fact arises from respondents' efforts to escape from the terms of existing agreements, the result of which has been the displacement of employees from established homes and

subjection to other hardships in relation to their employment. The issues in the cause are thus concerned with the right of employees to hold respondents to the obligations of their agreements, to require negotiations for the creation of new rights in the future, and to avoid unacceptable and harsh changes in working conditions while procedures specified in existing agreements are being pursued. The dispute involves the right of the employees to negotiate with respondents respecting the terms and conditions under which new intradivisional service may be established.

Prior to respondents' arbitrary action in changing working conditions of the employees, established way-freight assignments had been in existence for more than twenty-five years. Two crews operated between the home terminal of Wichita Falls, Texas, and Altus, Oklahoma, a distance of 75.9 miles. One additional crew operated between the home terminal of Altus and Elk City, Oklahoma, a distance of 58.3 miles. Another crew operated between the home terminal of Elk City and Woodward, Oklahoma, a distance of 84.8 miles. And one more crew operated between the home terminal of Woodward and Forgan, Oklahoma, a distance of 83.2 miles.

Respondents' General Order No. 119 issued without prior arrangement or agreement with the employees abolished such assigned way freight service between Wichita Falls and Forgan. By that order two crews were assigned to operate between the home terminal of Wichita Falls and Elk City, a distance of 134.2 miles, and one crew was assigned to operate between the home terminal of Elk City and Forgan, Oklahoma, a distance of 168 miles.

General Order No. 120 arbitrarily abolished Altus and Woodward as away-from-home terminals for unassigned crews in through freight service, established Elk City as

an away-from-home terminal for such crews, and left Wichita Falls as the home terminal and Forgan as an away-from-home terminal for such crews. Petitioners protested the general orders and requested their cancellation or withdrawal, basing their protest on plain provisions of collective bargaining agreements in effect between the parties.

Respondents have bound themselves by separate agreements with petitioners, Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen, in the event of their desire to establish intradivisional runs in freight service, to give notice of such desire and negotiate in good faith on such proposal, with the right in either party, in the event of failure to agree, to invoke the services of the National Mediation Board, and with the further right in either party, should there be failure to agree during mediation, to invoke the services of a national committee created by the agreements.

Respondents have bound themselves with petitioners, Brotherhood of Railroad Trainmen and the Order of Railway Conductors and Brakemen, not to make changes in tabulated runs except upon the justification of changed business conditions, and on ten days' notice, in an agreement which provided among other things, that "all rulings in reference to articles of this Agreement shall be made in writing only by the officials signing this Agreement, and the General Chairmen of the O. R. C. and B. R. T. organizations will be furnished with a copy of such rulings, but such rulings shall not be made effective until agreed to by the parties herein mentioned." (R. 129.)

Respondents also have entered into agreements other than the foregoing with each of petitioners not to serve any notice or progress any pending notice, during the effective period of such agreements, "to negotiate agreements * * * which would have the effect of increasing or decreasing

the number of employees required to be used under existing agreements." (R. 160, 161, 164, 167.)

These agreements between respondents and petitioners evidence employees' hard won protection against hardships and inconveniences resulting from indiscriminate changes in established runs. Changes in runs patently result in turn in changes in home and away-from-home terminals, the length of runs, and points for reporting for and leaving work. Such changes entail for the employees the moving of residences, longer distances for travel to and from work, and the severance or impairment of family, social, and religious ties, as well as other economic and social consequences. The serious disruption of economic, family, social, religious, and community life as a consequence of abolishing railroad terminals and lengthening or changing runs is the thesis of a study by W. F. Cottrell in an article entitled "Death by Dieselization: A Case Study in the Reaction to Technological Change" in *American Sociological Review*, Vol. 16, No. 3 (1951).

Under existing collective bargaining agreements, after the carriers have decided to establish new intradivisional runs, they must initially so notify the employees and state conditions proposed for operating the service. This notice, in all its parts, lays the predicate for negotiations. Full disclosure and good faith bargaining on all facets of the dispute raised by the notice are contemplated. The agreements require, in succession, the procedures of notice, good faith bargaining, mediation, and voluntary arbitration or reference to a national committee, as means of protecting the employees against unilateral changes in working conditions.

The necessity for such protection of the employees in the first instance is revealed by the effects of the issuance of the general orders shown by this record. The number of

crews in service between Wichita Falls, Texas, and Forgan, Oklahoma, was reduced from five to three. Ten employees were summarily furloughed and were out of employment (R. 289). Altus and Woodward, Oklahoma, were abolished as home terminals (R. 48), and the employees who resided there were confronted with alternatives of moving their residences and families to the distant new home terminals or of maintaining their homes at present locations and travelling excessive distances to the newly established points for commencement of their runs. Some employees found it essential to travel as much as 60 miles to the new terminals.

If the conditions attached by the District Court to the strike injunction had not been stayed and ultimately set aside by the Court of Appeals and the injunction couched in its original terms were still in force, these drastic effects on the working conditions and private lives of the employees would not have occurred. The impact of the general orders will of course persist so long as the submission pends before the Adjustment Board and the strike injunction does not contain appropriate protective conditions. By the requirement to restore the status quo ante, until the Adjustment Board should decide the dispute submitted by respondents, the employees were assured either of payment of their wages by respondents or continuance of established runs.[1]

It is apparent from the record of disposition of cases by the First Division of the National Railroad Adjustment Board that a decision of the submitted dispute will not be forthcoming for a substantial period. The verity of this statement may be demonstrated statistically, although it is a matter of common knowledge in the railroad industry,

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[1] If the first alternative were elected, payments to the employees would amount to $35,000 a year. (R. 302.)

and denial by respondents is not anticipated. As of June 30, 1958, according to the last report of the National Mediation Board, 2530 cases were pending on the docket of the First Division. Within the ensuing fiscal year, 1084 new cases were filed while only 742 were disposed of in various ways. Actually during the latest twelve months' period for which a report is available, 342 cases were added to the earlier accumulations, with the result that on June 30, 1959, there were 2872 cases on the docket of the First Division. The submissions of respondents were filed with the First Division in December, 1958, and hence were among the younger cases in the accumulation of 2872 existing on June 30, 1959. Assuming disposition of 700 cases annually, it appears that approximately four years must elapse before respondents' submissions are reached by the Adjustment Board.[2]

The purposes of the agreements cannot be achieved if the operational changes of respondents have been in effect for several years. A decision by the Adjustment Board in favor of the employees several years after the changes have been made and the hardships and inconveniences experienced would be a hollow victory. At that time it would be manifestly impossible for the employees through negotiation to correct hardships of the service already endured. Nor would payments of money by respondents to the employees be adequate compensation. Monetary payments would not make up for the objectionable change in working conditions suffered by the employees for the several years. They could not adequately compensate employees who were no longer able to work at their place of

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[2] See Twenty-Fifth Annual Report of the National Mediation Board for the fiscal year ended June 30, 1959, and Twenty-Fifth Annual Report, First Division, National Railroad Adjustment Board, for the same fiscal year.

residence, who were required to travel long distances to report for work, and whose lay-over points at the end of their runs had been changed. The nature of the rights of the employees is such that unless they are protected before the operational changes take place, no adequate future remedy can be provided them.

It is to be noted that the Adjustment Board is not empowered to give temporary relief tantamount to that ordered by the District Court in imposing reasonable conditions on the grant of injunction. The Adjustment Board has jurisdiction only to interpret and apply rules of collective bargaining agreements. (45 U. S. C. Sec. 153 First (i).) It is not endowed with authority other than to resolve the specific questions of interpretation or application submitted by the parties to the proceedings before it. It has no powers of equitable nature corollary to its limited jurisdiction.

As Justice Rutledge stated in the dissenting opinion in *Order of Railway Conductors v. Pitney, supra*:

> "The decision of the Board will not restore this rightful status quo for the period required for making its determination, including the time not gone by, or in fact for any later period. The only relief the Board can give is either 'an administrative declaratory determination' or an award of money damages, subject to the special provision for judicial review. Although the latter remedy would afford partial vindication of private rights, it does not safeguard the public interest, in accordance with the primary design of Section 6. And in many cases it may be impossible for a court to effectuate the Board's decision for the future with adequate restorative measures."

The dispute submitted by respondents and now pending before the Adjustment Board does not involve time claims of individual employees. The matter was submitted

by the respondents only as a dispute over their claim of right to make the changes unilaterally under existing agreements. The submission does not involve money claims for the employees displaced or injured as a result of the changes.

The decisions of the Court of Appeals and District Court are squarely at odds; that of the District Court would appear to be correct. Should the judgment of the Court of Appeals endure as a rule of law in the railroad industry, the most important objectives of the Railway Labor Act can be frustrated with ease and simplicity by any employer. The opinion of the Court of Appeals permits a carrier desiring to effect a change in working conditions as embodied in agreements, and simultaneously desiring to escape from the procedures of notice, negotiation, and mediation prescribed in agreements or in the Railway Labor Act, to order the changes to be made, to refer the dispute to the Adjustment Board, to procure an injunction against any strike provoked by its action, and then ride out the lapse of years required for Board decision. The carrier would be secure in the knowledge that the power of the courts did not transcend that of issuing the bare injunction against strike.

The controversy between the employees and respondents as brought before the District Court did not concern time claims. It involved the working conditions of the employees as a group. The agreements in effect between respondents and petitioners provide for notice, negotiation and subsequent procedures concerning establishment of or changes in intradivisional runs or numbers of crews assigned to them. Upon the theory that the changes effectuated by the general orders amounted to changes in agreements concerning rules and working conditions, it would appear that respondents have violated Section 6 and Sec-

tion 2, Seventh, of the Railway Labor Act, as well as the agreements themselves, by not following procedures therein prescribed.

By their submission to the Adjustment Board respondents seek a determination whether, by issuance of their general orders, the provisions of certain agreements and Section 6 have been violated. If the position of petitioners is sustained by the Adjustment Board it will have been determined that changes made by respondents could not have been made lawfully except by pursuit of the procedures set forth in the agreements or in accordance with Section 6 of the Railway Labor Act. But the action of respondents in making the changes during pendency of the dispute before the Adjustment Board will have completely nullified Section 6 which provides that in every case where notice of an intended change in working conditions has been given or the services of the National Mediation Board have been requested, working conditions shall not be altered until the controversy has been finally acted upon by the Mediation Board or until ten days have elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

The reasons stated in the dissenting opinion in the *Pitney* case for maintenance of the status quo ante while a dispute awaits administrative decision seem especially persuasive under such circumstances:

> "In my opinion, however, petitioners are entitled to immediate temporary relief, pending the determination of the Adjustment Board, in order to assure compliance with Section 6, if the Board should decide in their favor.
>
> "Section 6 enjoins a clear and positive duty on the part of carriers and employees, a duty which is judicially enforceable, since no other remedy is provided. The opinion of the Court so rules as I under-

stand it, for otherwise there would be no reason for holding the cause. But if, pending the Board's determination, the change forbidden by Section 6 takes place and the Board's decision turns out to be in favor of the petitioners, the very purpose of Section 6 will have been defeated. Its object is to maintain the status quo, pending the expiration of the period provided by the section for allowing the processes of negotiation, mediation and conciliation to have play. It is to prevent changes being made until these processes have been exhausted or the prescribed waiting period has expired without bringing them into effect. See *Brotherhood of R. Trainmen v. Toledo, P. & W. R. Co.*, 321 U. S. 50; cf. *Elgin, J. & E. R. Co. v. Burley*, 325 U. S. 711."

It is to be anticipated that respondents will argue that reversal of the Court of Appeals and affirmation of the judgment of the District Court will provide employees of railroads with weapons with which to vitiate what the railroads have chosen to call their prerogative to manage their properties according to the dictates of their own judgment. Almost certainly it will be urged that in the event it is held that injunctions may be conditioned so as to maintain the status quo the labor organizations will in every case of change of operating conditions claim violation of an agreement and demand maintenance of the status quo. The complete answer would appear to be that a court, without the necessity of adjudicating the merits, could readily perceive whether the claims of the labor organizations were frivolous or had substance.

By denying the existence of any power to condition an injunction issued under the *Chicago River* case the Court of Appeals has given its approval to respondents' contempt for law. It is only by reason of a deliberate violation of the Railway Labor Act that the changes decreed

by the general orders were accomplished at the time of issuance of the temporary restraining order. On October 2, 1958, respondents published the general orders informing these employees that on October 19, 1958, the changes which provoked the strike would be made (R. 80, 82). Petitioners requested cancellation of the general orders and invoked the services of the National Mediation Board. On October 14, 1958, the Board advised respondents of the invocation of its services (R. 50). The National Mediation Board remained in the case until it closed its file on November 5, 1958 (R. 51). In such circumstances Section 6 of the Railway Labor Act explicitly forbids a change in the status quo. Nonetheless, respondents placed the changes in effect on October 19, 1958 (R. 50). They then contended that the District Court from which they obtained an injunction against a strike provoked by their action could not order restoration of the status quo pending decision of the Adjustment Board to which respondents referred the dispute thirty-four days after obtaining the temporary restraining order.

The Court of Appeals has held that the District Court could not, on the theory of requiring respondents to come into equity with clean hands or on any other basis, require restoration of the status quo. The *Chicago River* case authorizes injunctions against strikes of employees when essential to protect the jurisdiction of the Adjustment Board, but nowhere does it appear therein that this Court has denied to courts issuing injunctions in such cases the power to require one seeking the writ to come to court with clean hands and to do equity.

CONCLUSION.

For the reasons set forth above, petitioners respectfully request that this Court reverse the judgment of the Court of Appeals for the Fifth Circuit vacating that part of the judgment of the District Court of December 18, 1958, requiring restoration and maintenance of the status quo or the optional alternative payments, and that this cause be remanded to the Court of Appeals with directions to reinstate in all respects the order of the District Court of December 18, 1958, and to assess costs against respondents.

Respectfully submitted,

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APPENDIX.

Statute Involved.

The Railway Labor Act as amended 45 U. S. C. Sections 151ff.

Sec. 151a (*General purposes*):

> The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; * * * (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

Sec. 152 (*General duties—Duty of carriers and employees to settle disputes*):

> First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.
>
> Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.
>
> * * * * *
>
> Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions

Fontes v. Porter, 156 F. 2d 956;

Freedom National Bank v. Northern Illinois Corporation, 202 F. 2d 601;

Mah Toi v. Brownell, 219 F. 2d 642, certiorari denied, 350 U. S. 823, 100 L. Ed. 735, 76 S. Ct. 49.

The Norris-LaGuardia Act has no application to this case. This is clearly shown by the following excerpts from the opinion of this Court in *Brotherhood of Railroad Trainmen, et al. v. Chicago River & Indiana Railroad Company, et al., 353 U. S. 30, 1 L. Ed. 2d 622, 77 S. Ct. 635, rehearing denied, 353 U. S. 948, 1 L. Ed. 2d 857, 77 S. Ct. 823:*

"The only question which remains is whether the federal courts can compel compliance with the provisions of the Act to the extent of enjoining a union from striking to defeat the jurisdiction of the Adjustment Board. The Brotherhood contends that the Norris-LaGuardia Act has withdrawn the power of federal courts to issue injunctions in labor disputes. That limitation, it is urged, applies with full force to all railway labor disputes as well as labor controversies in other industries.

"We hold that the Norris-LaGuardia Act cannot be read alone in matters dealing with railway labor disputes. There must be an accommodation of that statute and the Railway Labor Act so that the obvious purpose in the enactment of each is preserved. We think that the purposes of these Acts are reconcilable.

"In adopting the Railway Labor Act, Congress endeavored to bring about stable relationships between labor and management in this most important national industry. It found from the experience between 1926 and 1934 that the failure of voluntary machinery to resolve a large number of minor disputes called for

a strengthening of the Act to provide an effective agency, in which both sides participated, for the final adjustment of such controversies. Accumulation of these disputes had resulted in the aggregate being serious enough to threaten disruption of transportation. Hence, with the full consent of the brotherhoods, the 1934 amendment became law.

"The Norris-LaGuardia Act, on the other hand, was designed primarily to protect working men in the exercise of organized, economic power, which is vital to collective bargaining. The Act aimed to correct existing abuses of the injunctive remedy in labor disputes. Federal courts had been drawn into the field under the guise either of enforcing federal statutes, principally the Sherman Act, or through diversity of citizenship jurisdiction. In the latter cases, the courts employed principles of federal law frequently at variance with the concepts of labor law in the States where they sat. Congress acted to prevent the injunctions of the federal courts from upsetting the natural interplay of the competing economic forces of labor and capital. Rep. LaGuardia, during the floor debates on the 1932 Act, recognized that the machinery of the Railway Labor Act channeled these economic forces, in matters dealing with railway labor, into special processes intended to compromise them. Such controversies, therefore, are not the same as those in which the injunction strips labor of its primary weapon without substituting any reasonable alternative.

"In prior cases involving railway labor disputes, this Court has authorized the use of injunctive relief to vindicate the processes of the Railway Labor Act. Virginian R. Co. v. System Federation No. 40, 300 U. S. 515, was an action by the union to enjoin compliance with the Act's provisions for certification of a bargaining representative. The question raised was whether a federal court could issue an injunction in a labor dispute. The Court held:

> " 'It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provisions are found not to conflict with those of §2, Ninth, of the Railway Labor Act, authorizing the relief which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act.' Id., at 563.
>
> "In Brotherhood of Railroad Trainmen v. Howard, 343 U. S. 768, and other similar cases, the Court held that the specific provisions of the Railway Labor Act take precedence over the more general provisions of the Norris-LaGuardia Act.
>
> " 'Our conclusion is that the District Court has jurisdiction and power to issue necessary injuctive orders [to enforce compliance with the requirements of the Railway Labor Act] notwithstanding the provisions of the Norris-LaGuardia Act.' Id., at 774.
>
> "This is a clear situation for the application of that principle" (U. S. pages 39-42, L. Ed. pages 628-630).

Since the Norris-LaGuardia Act is not applicable, there is no merit in petitioners' implied complaint that the District Court lacked jurisdiction to issue the preliminary injunction against petitioners for non-compliance with Section 7 of that Act (Petition, pages 5, 12).

The preliminary injunction was issued because petitioners' claims of agreement violations by respondents have been submitted by respondents to the National Railroad Adjustment Board and, subject to jurisdictional objections, in part to the National Mediation Board and Committees established by some of the agreements which petitioners claim have been violated by respondents (R. 102-103, 220-427) (Vol. 1, pages 102-103; Vol. 2, pages 55-262). The

fact of such submissions is admitted by petitioners (Petition, pages 2-3, 11-12); copies of those submissions were attached as Exhibits A to J, inclusive, to the Amendment and Supplement to Complaint, as amended (R. 58-59, 68-72, 166-427) (Vol. 1, pages 58-59, 68-72; Vol. 2, pages 1-262); and leave to amend was granted without objection from petitioners (R. 482, 484) (Vol. 3, pages 54, 56). It was not necessary, therefore, for the District Court to find these admitted facts. "Neither proof nor finding is requisite in respect of uncontested issues", *Fontes v. Porter, 156 F. 2d 956, 957; Freedom National Bank v. Northern Illinois Corporation, 202 F. 2d 601, 606; Mah Toi v. Brownell, 219 F. 2d 642, 643, certiorari denied, 350 U. S. 823, 100 L. Ed. 735, 76 S. Ct. 49.*

Likewise, there is no merit in petitioners' implied contention that issuance of the preliminary injunction against petitioners was prohibited by Section 8 of the Norris-LaGuardia Act. As appears from other sections of this brief, respondents have not failed to do any of the things required by that section as conditions precedent to the granting of injunctive relief.

Point 6

The District Court had no authority or discretion to issue the preliminary mandatory injunction against respondents; in the alternative, its issuance was an abuse of discretion.

Authorities

Order of Railway Conductors v. Pitney, 326 U. S. 561, 90 L. Ed. 318, 66 S. Ct. 322;

Slocum v. Delaware, L. & W. R. Co., 339 U. S. 239, 94 L. Ed. 795, 70 S. Ct. 577;

43 C. J. S., Injunctions, Section 182;

Rule 65(c) of the Federal Rules of Civil Procedure.

The District Court had no authority or discretion to issue the preliminary mandatory injunction against respondents (R. 102-103) (Vol. 1, pages 102-103) because such injunction was an unlawful invasion of the jurisdiction of the National Railroad Adjustment Board, *Order of Railway Conductors v. Pitney, 326 U. S. 561, 90 L. Ed. 318, 66 S. Ct. 322; Slocum v. Delaware, L. & W. R. Co., 339 U. S. 239, 94 L. Ed. 795, 70 S. Ct. 577.*[23]

The District Court had no authority or discretion to issue the preliminary mandatory injunction against respondents because there are no pleadings or evidence to support it. "For relief by injunction the applicant's case must be presented by a bill or complaint or by a cross bill", or an affidavit which "contains all the ingredients of a bill of complaint", and "all the facts necessary to entitle complainant to an injunction must be set forth", *43 C. J. S., Injunctions, Section 182.* In this case, an injunction was not even sought by petitioners.

The District Court had no authority or discretion to issue the preliminary mandatory injunction against respondents because no security was required of petitioners and the

[23] Argument enlarged under Point 2.

other defendants as required by Rule 65(c) of the Federal Rules of Civil Procedure, reading in part as follows:

> "No * * * preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained."

In the alternative, the District Court abused its discretion in issuing the preliminary mandatory injunction against respondents because (1) such injunction was an unlawful invasion of the jurisdiction of the National Railroad Adjustment Board; (2) such injunction is not supported by any pleadings or evidence; and (3) no security was required of petitioners and other defendants as required by Rule 65(c) of the Federal Rules of Civil Procedure.

Point 7

The District Court had no authority or discretion to make the preliminary mandatory injunction against respondents a condition upon which the preliminary injunction was issued against petitioners; in the alternative, the attachment of such condition was an abuse of discretion.

Authorities

Hunter Douglas Corporation v. Lando Products, 235 F. 2d 631;

Order of Railway Conductors v. Pitney, 326 U. S. 561, 90 L. Ed. 318, 66 S. Ct. 322;

Secretary of Banking of Pennsylvania v. Alker, 183 F. 2d 429;

Slocum v. Delaware, L. & W. R. Co., 339 U. S. 239, 94 L. Ed. 795, 70 S. Ct. 577;

Rule 65(c) of the Federal Rules of Civil Procedure.

The District Court, by order dated December 18, 1958, granted respondents' application for a preliminary injunction and enjoined a strike by respondents' engineers, firemen, conductors, brakemen, and switchmen, pending decision by the National Railroad Adjustment Board,[26] on submission by respondents, as to whether respondents violated any agreements with petitioners when respondents on October 19, 1958, made certain changes in their assigned way freight service and in their away-from-home terminals, for unassigned through freight service between Wichita Falls, Texas, and Forgan, Oklahoma (R. 102-103, 76-78, 84-85, 86-89, 166-427) (Vol. 1, pages 102-103, 76-78, 84-85, 86-89; Vol. 2, pages 1-262).

In the same order of December 18, 1958, the District Court issued a preliminary mandatory injunction against respondents commanding them, pending such decisions by said Board and Committees, either to restore such way freight service or pay to employees adversely affected by such change in way freight service the same amount of

[26]And pending decisions by the National Mediation Board and by Committees established by some agreements which petitioners claim respondents violated, on submissions made by respondents subject to jurisdictional objections (R. 102-103, 220-427) (Vol. 1, pages 102-103; Vol. 2, pages 55-262).

money which such employees would have earned had such changes in way freight service not been made (R. 102-103) (Vol. 1, pages 102-103).

On December 29, 1958, respondents appealed from said preliminary mandatory injunction (R. 104-105) (Vol. 1, pages 104-105).

In an order entered as of January 5, 1959, denying respondents' motion for a stay, the District Court attempted to explain, alter, modify, amend, limit, or condition, the preliminary injunction against petitioners and to make the preliminary mandatory injunction against respondents a condition upon which the preliminary injunction was issued against petitioners (R. 136-138) (Vol. 1, pages 136-138). This could not be accomplished in such collateral fashion and such action was precluded by respondents' appeal from the preliminary mandatory injunction which transferred jurisdiction of the subject matter from the District Court to the Court of Appeals. The District Court "was therefore without authority to act in matters relating to the subject matter until the mandate was returned". *Hunter Douglas Corporation v. Lando Products, 235 F. 2d 631, 632-633.* See also, *Secretary of Banking of Pennsylvania v. Alker, 183 F. 2d 429, 431.*

In the alternative, the District Court abused any discretion it might have had to enter said order of January 5, 1959, because such order (1) was an unlawful invasion of the jurisdiction of the National Railroad Adjustment

Board;[27] (2) there are no pleadings or evidence to support such order; and (3) no security was required of petitioners and other defendants as required by Rule 65(c) of the Federal Rules of Civil Procedure.

Point 8

The District Court unlawfully destroyed the status quo existing when the preliminary injunction was issued against petitioners and the District Court unlawfully restored and preserved the status quo which existed before respondents made said service changes and before the strike which made this litigation necessary.

Authorities

Benson Hotel Corporation v. Woods, 168 F. 2d 694;

Hunter v. Atchison, T. & S. F. Ry. Co., 188 F. 2d 294.

By order dated December 18, 1958, the District Court issued a preliminary mandatory injunction against respondents commanding them, pending decisions of the National Railroad Adjustment Board, the National Mediation Board, and established Committees, either to restore way freight service which had been changed on October 19, 1958, or to pay to employees adversely affected by such change the same amount of money which such employees would have earned had such changes in way freight service not been made (R. 102-103, 76-78) (Vol. 1, pages 102-103,

[27]Order of Railway Conductors v. Pitney, 326 U. S. 561, 90 L. Ed. 318, 66 S. Ct. 322; Slocum v. Delaware, L. & W. R. Co., 339 U. S. 239, 94 L. Ed. 795, 70 S. Ct. 577.

76-78). In so doing, the District Court unlawfully destroyed the status quo existing on December 18, 1958, when that Court granted respondents' application for a preliminary injunction against petitioners (R. 102-103) (Vol. 1, pages 102-103), and the District Court unlawfully restored and preserved the status quo which existed before respondents made said service changes on October 19, 1958, and before the strike on November 6, 1958, which made this litigation necessary (R. 74-75) (Vol. 1, pages 74-75). The object of a preliminary injunction "is to preserve the subject of the controversy in its *then* existing condition" (our italics), *Hunter v. Atchison, T. &. S. F. Ry. Co., 188 F. 2d 294, 298;* or, as otherwise stated, "to prevent a threatened wrong or any further perpetration of injury, or the doing of any act pending the final determination of the action whereby rights may be threatened or endangered, and to maintain things in the condition in which they are in at the time and thus to protect property or rights from further complication or injury until the issues can be determined after a full hearing", *Benson Hotel Corporation v. Woods, 168 F. 2d 694, 696.*

Point 9

The District Court unlawfully adjudicated the merits on the application for a preliminary injunction.

Authorities

Hunter v. Atchison, T. & S. F. Ry. Co., 188 F. 2d 294.

The District Court, by order dated December 18, 1958, issued a preliminary mandatory injunction against re-

spondents commanding them, pending decisions of the National Railroad Adjustment Board, the National Mediation Board, and established Committees, either to restore way freight service which had been changed on October 19, 1958, or to pay to the employees adversely affected by such change the same amount of money which such employees would have received had such changes in way freight service not been made (R. 102-103, 76-78) (Vol. 1, pages 102-103, 76-78). This was a prohibited adjudication of the merits of this case on respondents' application for a preliminary injunction, *Hunter v. Atchison, T. & S. F. Ry. Co., 188 F. 2d 294, 299.*

CONCLUSION

If the preliminary mandatory injunction against respondents or the condition attached to the preliminary injunction against petitioners is restored, a disastrous pattern will be set for the railroad industry. Every time a railroad company makes an operating change, even though authorized by or not prohibited by its labor agreements, a labor union will claim an agreement violation and threaten to strike. In order to prevent a strike, the railroad company will seek an injunction and submit the union's claim to the National Railroad Adjustment Board. While the claim is pending before such Board, the Court will compel the railroad company either to restore the operating condition or pay the affected employees the sums of money which they would have received had such operating change not been made. The end result is that no operating change,

even though authorized by or not prohibited by an agreement, can be made without prior approval of such Board. This was never intended by, and is a perversion of, the Railway Labor Act.

We respectfully submit that the petition for a writ of certiorari should be denied.

Respectfully submitted,

/s/ M. E. CLINTON

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/s/ O. O. TOUCHSTONE

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Dated July 29, 1959.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the foregoing brief upon counsel for petitioners, by depositing such copies in the United States mail, first-class postage prepaid, and addressed to them as follows: Mr. J. Hart Willis, 1408 Tower Petroleum Building, Dallas 1, Texas; Mr. Wayland K. Sullivan, 1370 Ontario Street, Cleveland 13, Ohio; Mr. Harold C. Heiss, Keith Building, Cleveland 15, Ohio; Mr. Clarence E. Weisell, 1706 Union Commerce Building, Cleveland 14, Ohio; Mr. V. C. Shuttleworth, 1120 Merchants National Bank Building, Cedar Rapids, Iowa; Mr. William P. Fonville, 2232 Republic National Bank Building, Dallas 1, Texas; and Mr. Hart Willis, Jr., 1408 Tower Petroleum Building, Dallas 1, Texas.

I also hereby certify that said copies were forwarded by air mail on this date to all of said counsel for petitioners in Cleveland, Ohio, and Cedar Rapids, Iowa.

Dated July 29, 1959.

/s/ M. E. CLINTON

Of Counsel for Respondents

APPENDIX A

In the

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 17580

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, *et al.*,
Appellants-Appellees,

versus

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, *et al.*,
Appellees-Appellants.

(AND REVERSE TITLE)

Appeals from the United States District Court for the Northern District of Texas

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(April 20, 1959)

Before RIVES, JONES, and WISDOM, Circuit Judges.

RIVES, Circuit Judge: At 6:00 o'clock A. M. on November 6, 1958, the engineers, firemen, conductors, brakemen and switchmen of appellant Railroad Companies

struck and ceased work. The strike was called without notice to the Railroad Companies by the four railroad labor organizations.[1] The strike stopped all train operations of the Railroad Companies over 2919 miles of track extending from St. Louis and Kansas City, Missouri, on the north to Oklahoma City, Oklahoma, and to Houston and San Antonio, Texas, on the south. The strike was halted on the same day by a temporary restraining order issued by the district court upon the application of the Railroad Companies.

The strike had been precipitated by General Orders 119 and 120, issued October 2, 1958, by the Railroad Companies, effective at 12:01 A. M. on October 19, 1958. Those orders made certain changes in the intradivisional runs of freight trains and the away-from-home terminals for freight service between Wichita Falls, Texas, and Forgan, Oklahoma, a distance of 302 miles. Before the orders became effective, the National Mediation Board advised the Railroad Companies that the employees had invoked the services of that Board, but the Railroad Companies nonetheless placed the orders into effect as scheduled. About a month later, but prior to the hearing of their application for a preliminary injunction, the Railroad Companies undertook to submit the matters in dispute to the National Railroad Adjustment Board, and in part, to the National Mediation Board, and to Committees established by the collective bargaining agreements.

[1]The Brotherhood of Locomotive Engineers, The Brotherhood of Locomotive Firemen and Enginemen, The Brotherhood of Railroad Trainmen, and The Order of Railway Conductors and Brakemen.

On December 18, 1958, the district court granted a preliminary injunction enjoining the strike pending decisions by said Boards and Committees, and in the same order, directed the Railroad Companies to restore and maintain conditions affected by their General Orders 119 and 120 to the conditions which existed prior to the effective date of such orders or, on the election of the Companies, pay the employees adversely affected by such orders the same amounts they would have paid such employees had the changes made by such orders not been effected.

On December 29, 1958, the Railroad Companies filed notice of appeal from that part of the order requiring them to restore and maintain the status quo pending the injunction. On January 5, 1959, they sought from the district court a stay of that portion of the order. The court then ruled that the injunction had been granted on condition that the Railroad Companies restore and maintain the status quo, and denied the stay requested by them and entered an order so reciting. On January 6, 1959, the Railroad Companies obtained from this Court[2] a stay of that portion of the order dated December 18, 1958, requiring them to restore the status quo. On January 13, 1959, the Railroad Companies attempted to appeal from the district court's order of January 5, 1959.[3] On January 15, 1959, the defendant employees and labor organizations appealed from that part of the order of December 18, 1958, granting a

[2]The panel being composed of Circuit Judges Tuttle, Jones, and Brown.

[3]In view of our ruling on the appeal from the part of the order of December 18, 1958, requiring the restoration of the status quo, we find it unnecessary to rule upon the attempted appeal from the order of January 5, 1959.

preliminary injunction against them. The 302-mile line over which this controversy arose constitutes a separate seniority district for the engineers, firemen, conductors, and brakemen.

Prior to October 19, 1958, way freight crews on this line were assigned as follows:

> Two crews between North Yard (Wichita Falls, Texas) and Welon (Altus, Oklahoma) a distance of 75.9 miles, daily except Sunday, with North Yard the home terminal for both crews, and with Sunday layover at North Yard for one crew and at Welon for the other crew;
>
> One crew from Welon (Altus, Oklahoma) to Elk City, Oklahoma, and return, a distance of 58.3 miles in each direction, daily except Saturday, with Welon the home terminal and with Saturday layover at Welon;
>
> One crew from Elk City, Oklahoma, to Guest (Woodward, Oklahoma), a distance of 84.8 miles, on Mondays, Wednesdays and Fridays, and from Guest to Elk City on Tuesdays, Thursdays and Saturdays, with Elk City the home terminal and with Sunday layover at Elk City; and
>
> One crew from Guest (Woodward, Oklahoma) to Forgan, Oklahoma, a distance of 83.2 miles, on Mondays, Wednesdays and Fridays, and from Forgan to Guest on Tuesdays, Thursdays and Saturdays, with Guest the home terminal and with Sunday layover at Guest.

Such way freight assignments, or similar way freight assignments between North Yard (Wichita Falls, Texas)

and Forgan, Oklahoma, have been in existence for more than twenty-five years.

Effective at 12:01 A. M. on October 19, 1958, the Railroad Companies rearranged assigned way freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, as follows:

> Assigned two way freight crews to operate between North Yard (Wichita Falls, Texas) and Elk City, Oklahoma, a distance of 134.2 miles, daily except Sunday, with North Yard the home terminal of both crews, and with Sunday layover at North Yard for one crew and at Elk City for the other; and
>
> Assigned one way freight crew to operate from Elk City, Oklahoma to Forgan, Oklahoma a distance of 168 miles, on Mondays, Wednesdays and Fridays, and from Forgan to Elk City on Tuesdays, Thursdays and Saturdays, with Elk City the home terminal and with Sunday layover at Elk City.

This arrangement of way freight service was made in accordance with General Order No. 119.

Prior to October 19, 1958, North Yard (Wichita Falls, Texas) was the home terminal and Altus, Oklahoma, and Forgan, Oklahoma, were the bulletined away-from-home terminals for unassigned crews in through freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma. Effective at 12:01 A. M. on October 19, 1958, the Railroad Companies abolished Altus, Oklahoma, and Woodward, Oklahoma, as away-from-home terminals for unassigned crews in through freight service, established

Elk City, Oklahoma, as an away-from-home terminal for such crews, leaving North Yard (Wichita Falls, Texas) as the home terminal and Forgan, Oklahoma, as an away-from-home terminal for such crews. This change in away-from-home terminals was made in accordance with General Order No. 120.

In response to the district court's question as to "the number of men that were put out of employment by the change," the counsel for the Railroad Companies replied, "There were ten."

While not so strongly urged,[4] the attacks of the defendants, cross-appellants, on the jurisdiction of the district court to grant the preliminary injunction are matters which cannot be waived and which we should consider at the outset. Indeed, we find the jurisdictional questions practically determinative of the appeal as well as of the cross-appeal.

No testimony of witnesses was heard in open court before the preliminary injunction was issued, nor did the district court make any findings of fact. Absent such testimony and findings, the defendants and cross-appellants insist that Section 7 of the Norris-La Guardia Act, 29 U. S. C. A. §107, deprived the district court of jurisdiction.

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[4]The position of appellees and cross-appellants is thus stated in brief:

". . . If the condition requiring the restoration of the status quo or the optional alternative payments be maintained in the order, the Employees are content to abide the determination of the various submissions made of the controversies by Carriers. Otherwise not."

The pertinent provisions of that section are quoted in the margin.[5]

The material facts were, however, admitted; that is, the strike, the matters in controversy (though not their legal effect), and the submissions by the Railroad Companies of the dispute to the National Railroad Adjustment Board and, in part, to the National Mediation Board and to the Committees established by agreement. Under such circumstance, the specific provisions of the Railway Labor Act, 45 U. S. C. A. §§ 151, et seq., take precedence over the more general provision of the Norris La Guardia Act. *Brotherhood of Railroad Trainmen, et al. v. Chicago River & Indiana Railroad Company, et al.*, 1957, 353 U. S. 30, 42.

The Railway Labor Act creates the National Railroad Adjustment Board for the resolution of "minor grievances" in the event that the parties are unable to agree upon their

---

[5]"No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in this chapter, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

"(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will continue unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

"(b) That substantial and irreparable injury to complainant's property will follow;

"(c) That as to each item of relief granted greater injury will be inflicted upon Complainant by the denial or relief than will be inflicted upon defendants by the granting of relief;

"(d) That complainant has no adequate remedy at law; and

"(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection." 29 U.S.C.A. §107

settlement, that is compulsory arbitration in this limited field. It does not provide a process for a final decision of a "major dispute." *Brotherhood of Railroad Trainmen, et al. v. Chicago River & Indiana Railroad Company, et al., supra.* As footnote 24 to the opinion in that case observes:

> "The Norris-LaGuardia Act has been held to prevent the issuance of an injunction in a railway labor case involving a 'major dispute.' *Brotherhood of Railroad Trainmen v. Toledo, P. & W. R. Co.*, 321 U. S. 50." (353 U. S. at p. 42.)

The differences between major disputes which must still be settled through traditional processes of agreement and minor disputes which the National Railroad Adjustment Board has been empowered finally to resolve has been elaborately discussed in *Elgin, J. & E. R. Co. v. Burley*, 1945, 325 U. S. 711, 722, et seq., from which we quote briefly:

> "The first relates to disputes over the formation of collective agreements or efforts to secure them. They arise where there is no such agreement or where it is sought to change the terms of one, and therefore the issue is not whether an existing agreement controls the controversy. They look to the acquisition of rights for the future, not to assertion of rights claimed to have vested in the past.
>
> "The second class, however, contemplates the existence of a collective agreement already concluded or, at any rate, a situation in which no effort is made to bring about a formal change in terms or to create a new one. The dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation or to an omitted case. In the latter event the claim is founded upon some incident of the employment relation, or asserted one, in-

> dependent of those covered by the collective agreement, e.g., claims on account of personal injuries. In either case the claim is to rights accrued, not merely to have new ones created for the future." (325 U. S. at p. 723.)

In the present case, collective agreements were in effect between the Railroad Companies and each of the Brotherhoods. The Brotherhoods claim that those agreements provide for notice and negotiation concerning establishment of or changes in district runs or numbers of crews assigned to them, with resolution of differences by Committees or officials designated in the collective agreements, and with the right of either party to invoke the services of the National Mediation Board. Upon the theory that the changes effected by Orders 119 and 120 amount to changes in *agreements* affecting rates of pay, rules or working conditions, the Brotherhoods claim that the Railroad Companies have violated Section 6 of the Railway Labor Act, 45 U. S. C. A. §156, by not following the procedure therein prescribed. The Railroad Companies claim that the existing agreements relate to establishment of service, not to changes or rearrangement of service long established, and that they have retained their powers of management to change terminals and rearrange runs when business or changed conditions justify.

Without intimating any view as to their validity, we think it clear that the respective *contentions* of the Railroad Companies and of the employees are based upon existing agreements; their *claims* are to rights accrued and not to have new rights created for the future. The dispute is thus a "minor" dispute, the resolution of which is committed to

the National Railroad Adjustment Board. Primary jurisdiction of that Board cannot be defeated by the emphasis with which any party asserts that its position is clearly the only rightful one, nor would it be appropriate for this Court to discuss the relative merits of questions which must be decided by that Board.

We conclude that the district court had jurisdiction to grant the preliminary injunction against a strike in this labor dispute in order to protect the primary jurisdiction of the National Railroad Adjustment Board to resolve the dispute.

Turning now to the appeal of the Railroad Companies, we do not find it necessary to decide whether the order of which they complain was a preliminary mandatory injunction against them or simply a condition upon which they were granted a preliminary injunction against the defendants. Whether injunction or condition, the order directed the Railroad Companies to restore and maintain conditions affected by their General Orders 119 and 120 to the conditions which existed prior to the effective date of such orders, or, at the election of the Companies, to pay the employees adversely affected by such orders the same amounts they would have paid such employees had the changes made by such orders not been effected. If we accept the premise, heretofore discussed and decided, that the dispute precipitated by General Orders 119 and 120 was a minor dispute, which the National Railroad Adjustment Board alone had jurisdiction to resolve, then it is clear that the district court could not pass any sort of preliminary judgment upon the

merits of that dispute. That kind of jurisdiction denied to the district court by the provisions of the Railway Labor Act cannot be exercised under the guise of discretionary equity powers to impose reasonable conditions upon the grant of an injunction, of requiring the plaintiff Railroad Companies to come into equity with clean hands, or upon any other theory whatsoever. To hold otherwise would permit the district court, in every case where either a railroad company or a labor organization seeks an injunction to protect the jurisdiction of the National Railroad Adjustment Board, to lift itself by its bootstraps into some kind of jurisdiction to pass preliminary judgment upon the merits of disputes committed to the exclusive jurisdiction of the Board.

That part of the judgment of the district court of December 18, 1958, requiring the restoration and maintenance of the status quo or the optional alternative payments, is therefore vacated; and, as thus modified, said judgment is affirmed.

MODIFIED AND AFFIRMED.

APPENDIX B

JUDGMENT

Extract from the Minutes of April 20, 1959.

No. 17580

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, *et al.*,

versus

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, *et al.*,

(AND REVERSE TITLE)

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Texas, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that that part of the judgment of the district court of December 18, 1958, requiring the restoration and maintenance of the status quo or the optional alternative payments, in this cause be, and the same is hereby, vacated; and, as thus modified, that judgment be, and it is hereby affirmed;

It is further ordered and adjudged that appellees-appellant, The Brotherhood of Locomotive Engineers, and others, be condemned in solido to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

APPENDIX C

STATUTES INVOLVED

The pertinent text of the statutes involved in this case follows:

Section 2 of the Railway Labor Act, 45 U. S. C. A., Section 151a, page 475:

> "The purposes of the chapter are: (1) to avoid any interruption to commerce or to the operation of any carrier engaged therein; * * * (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

Section 3 of the Railway Labor Act, 45 U. S. C. A., Section 153, pages 527, 529, 530:

> "First. There is established a Board, to be known as the 'National Railroad Adjustment Board', * * * and it is provided—
>
> * * * * * *
>
> "(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:
>
> "First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of 10 members, five of whom shall be se-

lected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

* * * * *

"(i) The disputes between any employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions * * * shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

* * * * *

"(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except in so far as they shall contain a money award. * * *

* * * * *

"(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay to the employee the sum to which he is entitled under the award on or before a date named.

"(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the

carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fees, to be taxed and collected as a part of the cost of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board."

* * * * *

Section 1 of the Interstate Commerce Act, 49 U. S. C. A., Section 1, pages 19, 20, 22, 26, 27:

* * * * *

"(4) It shall be the duty of every common carrier subject to this chapter to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, * * * . It shall be the duty of every such common carrier establishing through routes to provide reasonable facilities for operating such routes * * *.

* * * * *

"(6) It is made the duty of all common carriers subject to the provisions of this chapter to establish, observe, and enforce * * * just and reasonable regulations and practices affecting * * * the facilities for

transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this chapter which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this chapter upon just and reasonable terms, * * *.

* * * * *

"(9) Any common carrier subject to the provisions of this chapter, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper or owner of such lateral, branch line of railroad, such shipper or owner of such lateral, branch line of railroad may make complaint to the Commission, as provided in section 13 of this title, and the Commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor, and the commission may make an order, as provided in section 15 of this title, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the Commission, other than orders for the payment of money.

"(10) The term 'car service' in this chapter shall include the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, and other vehicles used in the transportation of property, including special types of equipment, and the supply of trains, by any carrier by railroad subject to this chapter.

"(11) It shall be the duty of every carrier by railroad subject to this chapter to furnish safe and adequate car service * * *.

* * * * *

"(18) No carrier by railroad subject to this chapter * * * shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment. * * *.

* * * * *

"(20) * * * From and after issuance of such certificate, and not before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the * * * abandonment covered thereby. Any * * * carrier which, or any director, officer, receiver, operating trustee, lessee, agent, or person, acting for or employed by such carrier, who knowingly authorizes, consents to, or permits any violation of the provisions of this paragraph or of paragraph (18) of this section, shall upon conviction thereof be punished by a fine of not more than $5,000 or by imprisonment for not more than three years, or both."

Section 3(4) of the Interstate Commerce Act, 49 U. S. C. A., Section 3(4), pages 221-222:

"All carriers subject to the provisions of this chapter shall, according to their respective powers, afford

all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; * * *."

Section 8 of the Interstate Commerce Act, 49 U. S. C. A., Section 8, pages 487-488:

"In case any common carrier subject to the provisions of this chapter shall do, cause to be done, or permit to be done any act, matter, or thing in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this chapter required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this chapter, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case."

Section 9 of the Interstate Commerce Act, 49 U. S. C. A., Section 9, page 506:

"Any person or persons claiming to be damaged by any common carrier subject to the provisions of this chapter may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this chapter in any district court of the United States of competent jurisdiction; * * *."

Section 10(1) of the Interstate Commerce Act, 49 U. S. C. A., Section 10(1), page 541:

"Any common carrier subject to the provisions of this chapter, or, whenever such common carrier is a

corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall wilfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this chapter prohibited or declared to be unlawful, or who shall aid or abet therein, or shall wilfully omit or fail to do any act, matter, or thing in this chapter required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this chapter to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this chapter for which no penalty is otherwise provided, or who shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed $5,000 for each offense: * * *."

Section 11 of the Interstate Commerce Act, 49 U. S. C. A., Section 11, page 555:

"A commission is created and established to be known as the Interstate Commerce Commission, * * *."

Section 12(1) of the Interstate Commerce Act, 49 U. S. C. A., Section 12(1), page 557:

"* * * The Commission is authorized and required to execute and enforce the provisions of this chapter; and, upon the request of the Commission, it shall be the duty of any United States attorney to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States all necessary proceedings for the enforcement of the provisions of this chapter and for the punishment of all violations thereof, * * *."

Section 13 of the Interstate Commerce Act, 49 U. S. C. A., Section 13, page 571:

"(1) Any person, firm, corporation, company, or association, or any mercantile, argricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier complaining of anything done or omitted to be done by any common carrier subject to the provisions of this chapter in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complainant within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

"(2) Said Commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission, and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this chapter, or concerning which any question may arise under any of the provisions

of this chapter, or relating to the enforcement of any of the provisions of this chapter. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its motion as though it had been appealed to by complaint or petition under any of the provisions of this chapter, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant. * * *."

* * * * *

Section 14(1) of the Interstate Commerce Act, 49 U. S. C. A., Section 14(1), page 610:

"Whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises; and in case damages are awarded, such report shall include the findings of fact on which the award is made."

Section 15 of the Interstate Commerce Act, 49 U. S. C. A., Section 15, pages 623-624:

* * * * *

"(8) In all cases where at the time of delivery of property to any railroad corporation being a common carrier for transportation subject to the provisions of tnis chapter to any point of destination, between which and the point of such delivery for shipment two or more through routes and through rates have been established as in this chapter provided to which through routes and through rates such carrier is a party, the person, firm, or corporation making such shipment, subject to such reasonable exceptions and regulations as the Interstate Commerce Commission

shall from time to time prescribe, shall have the right to designate in writing by which of such through routes such property shall be transported to destination, and it shall thereupon be the duty of the initial carrier to route said property and issue a through bill of lading therefor as so directed, and to transport said property over its own line or lines and deliver the same to a connecting line or lines according to such through route, and it shall be the duty of each of said connecting carriers to receive said property and transport it over the said line or lines and deliver the same to the next succeding carrier or consignee according to the routing instructions in said bill of lading * * *.

"(9) Whenever property is diverted or delivered by one carrier to another carrier contrary to routing instructions in the bill of lading, unless such diversion or delivery is in compliance with a lawful order, rule, or regulation of the Commission, such carriers shall, in a suit or action in any court of competent jurisdiction, be jointly and severally liable to the carrier thus deprived of its right to participate in the haul of the property, for the total amount of the rate or charge it would have received had it participated in the haul of the property. * * * In any judgment which may be rendered the plaintiff shall be allowed to recover against the defendant a reasonable attorney's fee to be taxed in the case."

* * * * *

Section 16 of the Interstate Commerce Act, 49 U. S. C. A., Section 16, pages 8-9, 11, 12:

"(1) If, after hearing on a complaint made as provided in section 13 of this title, the commission shall determine that any party complainant is entitled to an award of damages under the provisions of this chapter for a violation thereof, the commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

"(2) If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the district court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, or in any State court of general jurisdiction having jurisdiction of the parties, a complaint setting forth briefly the causes for which he claims damages, and the order of the commission in the premises. Such suit in the district court of the United States shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the commission shall be prima facie evidence of the facts therein stated, and except that the plaintiff shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the plaintiff shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit.

* * * * *

"(7) It shall be the duty of every common carrier, its agents and employees, to observe and comply with such orders so long as the same shall remain in effect.

"(8) Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of sections 3, 13, or 15 of this title shall forfeit to the United States the sum of $5,000 for each offense. Every distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense.

"(9) The forfeiture provided for in this chapter shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of

the United States, brought in the district where the carrier has its principal operating office, or in any district through which the road of the carrier runs.

"(10) It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. * * *.

* * * * *

"(12) If any carrier fails or neglects to obey any order of the commission other than for the payment of money, while the same is in effect, the Interstate Commerce Commission or any party injured thereby, or the United States, by its Attorney General, may apply to any district court of the United States of competent jurisdiction for the enforcement of such order. If, after hearing, such court determines that the order was regularly made and duly served, and that the carrier is in disobedience of the same, such court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it or them obedience to the same."

* * * * *

Section 20 of the Interstate Commerce Act, 49 U. S. C. A., Section 20, pages 96, 97, 99:

* * * * *

"(9) The district courts of the United States shall have jurisdiction, upon the application of the Attorney General of the United States at the request of the commission, alleging a failure to comply with or a violation of any of the provisions of this chapter or of any statutes supplementary thereto or amendatory thereof by any common carrier, to issue a writ or writs of mandamus commanding such common car-

rier to comply with the provisions of this chapter and said statutes, or any of them.

* * * * *

"(11) Any common carrier, railroad, or transportation company subject to the provisions of this chapter receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, * * *.

"(12) The common carrier, railroad, or transportation company issuing such receipt or bill of lading, or delivering such property so received and transported, shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained, the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action of law brought by the owners of such property."

APPENDIX D

NATIONAL MEDIATION BOARD
Washington

January 30, 1959

Mr. A. F. Winkel, Assistant General Manager
Missouri-Kansas-Texas Railroad Company
Dallas 2, Texas

Dear Mr. Winkel:

Further reference is made to your letter of December 16, 1958, transmitting five copies of application by the Missouri-Kansas-Texas Railroad Company and the Missouri-Kansas-Texas Railroad Company of Texas, subject to jurisdictional questions, for an interpretation of the meaning or application of Article VIII(b) of Mediation Case No. A-5241 between the Eastern, Western and Southeastern Carriers' Conference Committees and the Brotherhood of Locomotive Firemen & Enginemen, of Article VIII(b) of Mediation Case No. A-5248 between the Conference Committees and the Brotherhood of Locomotive Engineers and Article V(b) of Mediation Agreement Case No. A-5294 between the Conference Committees and the Order of Railway Conductors & Brakemen as applied to the facts set forth in the application.

Your application was considered by the Board in executive session on January 26, 1959. In view of the fact that the carriers named have submitted this dispute both to the

First Division of the National Railroad Adjustment Board and the Disputes Committees created by the articles of the national agreements mentioned above, the Board directed that your application for an interpretation of the national agreements in question be declined on the basis of the carriers having taken this dispute to the tribunals of appropriate jurisdiction created by Section 3 of the Railway Labor Act and the appropriate sections of the national agreements just mentioned.

By direction of the NATIONAL MEDIATION BOARD.

E. C. Thompson
Executive Secretary

APPENDIX E

NATIONAL MEDIATION BOARD
Washington

January 30, 1959

Mr. A. F. Winkel, Assistant General Manager
Missouri-Kansas-Texas Railroad Company
Dallas 2, Texas

Dear Mr. Winkel:

Further reference is made to your letter of December 16, 1958, attaching five copies of application by the Missouri-Kansas-Texas Railroad Company and the Missouri-Kansas-Texas Railroad Company of Texas, subject to jurisdictional questions, for an interpretation of the meaning or application of Article IV of the National Agreement dated May 23, 1952, between the Eastern, Western and Southeastern Carriers' Conference Committees and the Brotherhood of Locomotive Firemen & Enginemen, Article IV of the National Agreement of May 23, 1952, between the Conference Committees and the Brotherhood of Locomotive Engineers, and Article VI of the National Agreement dated May 23, 1952, between the Conference Committees and the Order of Railway Conductors & Brakemen, assuming that the latter agreement is in existence which is denied, as applied to the facts set forth in the application.

Your application was considered by the Board in executive session on January 26, 1959. In view of the fact that the carriers named have submitted this dispute both to the First Division of the National Railroad Adjustment Board and the Disputes Committees created by the articles of the national agreements mentioned above, the Board directed that your application for an interpretation of the national agreements in question be declined on the basis of the carriers having taken this dispute to the tribunals of appropriate jurisdiction created by Section 3 of the Railway Labor Act and the appropriate sections of the national agreements just mentioned.

By direction of the NATIONAL MEDIATION BOARD.

E. C. Thompson
Executive Secretary